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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 586

WERNER REIMANN,

Petitioner,

vs.

TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES,

Respondent

No. 587

CITIZENS PROTECTIVE LEAGUE, ET AL.,

Petitioners,

vs.

TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES,

Respondent

No. 588

CITIZENS PROTECTIVE LEAGUE, ET AL.,

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TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES,

Respondent

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA WITH BRIEF IN SUPPORT THEREOF.

JAMES J. LAUGHLIN,
Counsel for Petitioners.

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PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA WITH BRIEF IN SUPPORT THEREOF.

To the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States and Associate Justices of the Supreme Court of the United States:

The petitioners, Werner Reimann and the Citizens Protective League, et al, respectfully petition this Court

to grant writs of certiorari to the United States Court of Appeals for the District of Columbia to remove therefrom for review here the record in Cases No. 9194, 9193 and 9195, wherein petitioners are appellants and the respondent is appellee, and in which cases the Court announced its opinion under date of May 2, 1946, affirming the judgment of the District Court of the United States for the District of Columbia.

Basis of Jurisdiction

The jurisdiction of this Court is invoked under Section 240A of the Judicial Code, as amended by the Act of February 13, 1925.

The judgment to be reviewed is the judgment of the United States Court of Appeals for the District of Columbia entered on May 2, 1946.

Petition for rehearing was denied on May 27, 1946. The time within which petition for certiorari may be filed in this Court has been extended to October 7, 1946.

Summary Statement of Matter Involved

Three civil actions were brought in the District Court of the United States for the District of Columbia for mandatory injunction and ancillary relief. It was alleged that certain German Nationals were threatened with deportation as alien enemies. The respondent is the Attorney General of the United States. Injunction had been asked upon the ground that the Alien Enemy Act is repugnant to the Constitution. There was application made for designation of a three judge Court, by virtue of the Act of August 24, 1937. 28 U. S. C. A. 380a. The complaint alleged that the Alien Enemy Act of 1798, 1 Stat. 577, as amended, 8 U. S. C. A. 21, is unconstitutional. It is alleged that the Act of 1798 in any event had been

repealed at least by implication, and there is no legal basis for the attempted deportations inasmuch as the United States is not now at war with Germany; that the German Nationals had been guilty of no offenses against the United States subjecting them to deportation. It was alleged also that the Board appointed by the Attorney General to conduct hearings is biased and partial, and that it would be futile for petitioners to appear before the Board. The complaint alleged that nine of the parties were naturalized citizens of the United States and their citizenship was wrongfully revoked. The single appellant in No. 9194 alleges that his naturalization as a citizen of the United States was scheduled for December, 1942, but was not granted due to false statements made by his divorced wife; that the administrative hearing granted him in the deportation proceedings did not comply with due process of law and that the order of deportation is unconstitutional, illegal, contrary to existing law and did work irreparable injury.

We believe it will be conceded that all of the German Nationals are threatened with removal to Germany by virtue of the Presidential Order of July 14, 1945, unless this Court intervenes.

Questions Presented

The Alien Enemy Act of 1798 is unconstitutional. The District Court was in error in refusing to designate a three judge court when the issue of unconstitutionality was raised. The Executive was without power to promulgate the order for the removal. While there has been no executive or legislative direction that the war is officially at end the emergency has ceased to exist and German nationals cannot be removed without a showing that they are otherwise removable under the present Immigration Laws.

Reasons Relied upon for Allowance of Writs of Certiorari

1. The United States Court of Appeals for the District of Columbia has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by the District Court of the United States for the District of Columbia as to call for this Court's power of supervision.

2. There are serious constitutional questions involved in this petition which should be passed upon by this Court. The right of the Government of the United States to remove aliens from our land and to permit them to be sent perhaps to the slave labor camps in the Russian zone of occupation in Germany is revolting to our sense of justice. This Court should determine the question as to whether the war is now at an end and whether the proclamation by the President of the United States is now binding.

WHEREFORE, your petitioners respectfully pray that writs of certiorari be issued by this Court directed to the United States Court of Appeals for the District of Columbia commanding that Court to certify and send to this Court for its review and determination a full and complete transcript of the record and all proceedings in the cases numbered and entitled on its docket as No. 9194, Werner Reimann, Appellant, *v.* Tom C. Clark, Attorney General of the United States, Appellee; No. 9193, Citizens Protective League, et al., Appellants, *v.* Tom C. Clark, Attorney General of the United States, Appellee; and No. 9195, Citizens Protective League, et al., Appellants, *v.* Tom C. Clark, Attorney General of the United States, Appellee, and that the judgments of the Court below be reversed by this Court and that your petitioners have such other and further relief in the premises as to this Court may seem just.

JAMES J. LAUGHLIN,
National Press Building, Counsel for Petitioners.

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BRIEF IN SUPPORT OF PETITION

Opinions of the Court Below

The opinion below, announced May 2, 1946, appears in the record at pages 26-32. Rehearing was denied May 27, 1946.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240a of the Judicial Code, as amended by Act of February 13, 1925.

Statement of the Case

A concise statement of the case containing, as petitioners believe, all that is material to the consideration of the questions presented, is set forth in the petition and is not repeated here.

Argument

It is contended that these cases are controlled by the opinions of this Court in *Schneiderman* v. *United States*, 320 U. S. 118; *Baumgartner* v. *United States*, 322 U. S. 665; *Hartzell* v. *United States*, 322 U. S. 680; and *Bridges* v. *Wixon*, 89 Law Ed. 1489. The orders for the removal of the German Nationals were based upon the proclamation of the President, dated July 14, 1945, acting under the authority of the Alien Enemy Act of 1798. The proclamation set forth the following:

> "All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe."
>
> Record 9.

The respondent then notified the parties as follows:

> "Pursuant to the above proclamation and based upon the evidence considered at your earlier alien enemy

hearing or hearings, it has been determined that you should be removed and repatriated to the country of your nationality as soon as arrangements for your transportation can be made. You are hereby notified that prior to the issuance of a final order for your removal and repatriation you are entitled to a hearing before a hearing board appointed by the Attorney General. If you request a hearing as hereinafter provided, you will be accorded an opportunity to appear in person and to present evidence to show that you are not dangerous to the public peace and safety of the United States because of your adherence to an enemy government or to the principles of government thereof, or to show mitigating or extenuating circumstances in your case which you believe should constitute a valid reason why you should not be ordered repatriated."

It is our contention that unless it can be specifically shown that these parties committed acts of disloyalty against the United States while the war was in progress or have committed offenses subjecting them to deportation under existing law, that their removal is unwarranted and unjustified. True it is the country is still technically at war, but the dissenting opinion of Mr. Justice Rutledge in the case of *Application of Yamashita,* 66 Sup. Ct. Rpt. 340, at 362, has application. In that case Justice Rutledge said this:

> "We are technically still at war, because peace has not been negotiated finally or declared. But there is no longer the danger which always exists before surrender and armistice. Military necessity does not demand the same measures. The nation may be more secure now than at any time after peace is officially concluded. * * * Punitive action taken now can be effective only for the next war, for purposes of military security. And enemy aliens, including belligerents, need the attenuated protections our system extends to them more now than before hostilities ceased or than they may after a treaty of peace is signed."

The record fails to show the parties litigant whose removal is sought committed any acts of disloyalty towards the United States, but their only crime seems to be that they are Nationals of Germany. We believe that there is no precedent for the action contemplated here. The words of Mr. Justice Murphy in his dissenting opinion in the case of application of Yamashita, supra, at page 359, have application. We find this:

> "At a time like this when emotions are understandably high it is difficult to adopt a dispassionate attitude toward a case of this nature. Yet now is precisely the time when that attitude is most essential. While peoples in other lands may not share our beliefs as to due process and the dignity of the individual, we are not free to give effect to our emotions in reckless disregard of the rights of others. We live under the Constitution, which is the embodiment of all the high hopes and aspirations of the new world and which is applicable in both war and peace. We must act accordingly. Indeed, an uncurbed spirit of revenge and retribution, masked in formal legal procedure for purposes of dealing with a fallen enemy commander, can do more lasting harm than all of the atrocities giving rise to that spirit. The people's faith in the fairness and objectiveness of the law can be seriously undercut by that spirit."

The record discloses that there was an utter disregard of the constitutional requirement of due process of law. For instance, we find in Paragraph 11 of the complaint filed in District Court, in the case entitled Citizens Protective League, et al., *v.* Clark (Record 10), Civil Action No. 29881, the following:

> "Plaintiffs say unto the Court that by virtue of the letter written by the Assistant Attorney General provision is made for an administrative hearing and that a board has been appointed to conduct these hearings.

However, plaintiffs say unto the Court that it would be futile to appear before the said Board because the board is biased and partial and has great hostility toward all members or former members of the German-American Bund and in fact a member of the board makes the following statement preliminary to these hearings: 'If anyone has been a member of the German-American Bund or a member of the National Socialist Party in Germany he will be deported'."

Conclusion

It is contended that in the interest of justice that the orders for removal of the German Nationals involved in this suit be annulled and set aside. Wherefore, it is respectfully submitted that a writ of certiorari should issue as prayed.

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